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FILED

DEC 29 2008

BOARD OF PHARMACY

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION	:	Administrative
	:	Action
OR REVOCATION OF THE LICENSE OF	:	
	:	ORDER OF REINSTATEMENT
Charles Rubinstein, R.P.	:	
License No. 28RI01385600	:	
	:	
TO PRACTICE PHARMACY IN THE	:	
STATE OF NEW JERSEY	:	

This matter was opened to the New Jersey State Board of Pharmacy ("the Board") upon receipt of respondent Charles Rubinstein's application for reinstatement of his license to practice pharmacy in this State.

Respondent has a history of license discipline, including suspension and restrictions. Respondent first entered into a Consent Order on or about June 1977 following an arrest for unlawful possession of Schedule I and Schedule II controlled

dangerous substances (CDS) whereby he voluntarily surrendered his license to practice pharmacy. On or about August 1977, in Cape May County Superior Court, respondent pleaded guilty to charges of unlawful possession of Schedule I and Schedule II CDS and was sentenced to a probationary term of five years.

On or about April 1984, respondent's license to practice pharmacy was reinstated by the Board with the following restrictions: one year probation, whereby his practice during the first three months shall be in conjunction with another pharmacist; successful completion of 75 continuing education credits; and successful completion of the Board's examination in jurisprudence.

On or about October 2, 1990, respondent entered into a Consent Order with the Board based upon receipt of information that respondent knowingly and unlawfully dispensed controlled dangerous substances without a valid or authorized prescription, specifically Lomotil, a Schedule V controlled drug. Further, respondent filled for the same customer a prescription for Tussionex, a Schedule III controlled dangerous substance without any patient, refill, or substitution information reflected on the prescription. Pursuant to the 1990 Consent Order, Respondent's license to practice pharmacy was suspended for two years, the first three months of the suspension was active with the remaining 18 months stayed and served as a period of probation. Respondent was also assessed a civil penalty in the amount of \$3,000.00.

On or about September 17, 2004 respondent was convicted of a Third Degree Crime of Possession of Hydrocodone, a Schedule III Controlled Dangerous Substance. Specifically, respondent diverted Hydrocodone from his employer's active drug stock. Respondent was sentenced to a three (3) year probationary term, a six (6) month driver's license suspension, 100 hours community service, random urine screens, out-patient treatment for substance abuse for a minimum of six (6) years and fines totaling \$1,130.00. Based upon the above conviction, on April 2, 2006, respondent entered into a Consent Order with the Board and surrendered his license to practice pharmacy.

In support of his most recent application for reinstatement, respondent appeared and testified under oath before the Board on September 24, 2008. Respondent testified that he has been sober since 2004. He reported that he currently takes the prescription medications Tenormin/Atenolol, Zocor, Norvasc, and Trazodone. He currently attends Narcotics Anonymous meetings twice a week and Alcoholics Anonymous meetings once a week.

Respondent testified that he has completed all continuing education required by the Board. He reported that he has taken over 100 credits in the last year, that he has attended numerous seminars and reads pharmacy journals.

Dr. David I. Canavan of the Professional Assistance Program (PAP) also appeared on September 24, 2008 and testified

that the PAP supports the reinstatement of respondent's pharmacy license with certain monitoring restrictions.

Respondent, being desirous of resolving this matter without the necessity of further formal proceedings, and agreeing to waive any right to same, and the Board having determined that this Order is sufficiently protective of the public health, safety and welfare, and all parties agreeing to the terms of this Order;

ACCORDINGLY, IT IS on this 16th day of DECEMBER, 2008,

ORDERED THAT:

1. Respondent's license shall be reinstated following his provision to the Executive Director of the Board of the following documents which shall all be to the satisfaction of the Board:

- a. Proof of successful completion of all application requirements including a criminal history background check and payment of all reinstatement fees.
- b. After completing a criminal history background check with results that are satisfactory to the Board, Respondent shall successfully complete a 500 hour internship under the supervision of a Board approved preceptor and shall submit documentation of successful completion to the Board. Successful completion means that his preceptor recommends unconditionally and without reservation that Respondent is ready to practice pharmacy.

2. After respondent has complied with all of the requirements of paragraph one (1) of this Order to the satisfaction

of the Board, respondent's license to practice pharmacy shall be reinstated subject to the conditions in paragraphs three through seven of this Order.

3. Respondent shall not act as a preceptor or pharmacist-in-charge (RPIC) at any pharmacy and shall not own or have an ownership interest in any pharmacy until further Order of the Board.

4. Respondent will comply fully with the monitoring program established for him by the PAP. Such monitoring program shall include but not be limited to:

- a. Absolute abstinence from all psychoactive substances including alcohol unless prescribed by a treating health care professional for a documented medical condition and with notification from the treating health care professional to the executive medical director of the PAP of the diagnosis and treatment regime within five days of issuing the prescription. Respondent shall advise all of his treating health care practitioners, who prescribe medications, of his addiction history and shall be responsible to ensure that the treating health care professional notifies the PAP of any prescription for a psychoactive substance within five days of issuance of the prescription. Respondent shall also personally notify the PAP of any prescription for psychoactive substance within five days of issuance of the prescription.
- b. Respondent shall attend support group meetings of Narcotics Anonymous and/or Alcoholics Anonymous at a frequency of not less than two meetings per week. Respondent shall provide evidence of attendance at such groups directly to the PAP on a form or in a manner as required by the PAP.
- c. Respondent shall undergo random witnessed urine monitoring under the supervision of the PAP on a random, unannounced basis, at a frequency of no

less than once per week for the first twelve months following Respondent's return to practice. Subsequent reductions in the frequency of urine screens shall be at the direction of the executive medical director of the PAP consistent with Respondent's duration in recovery with prior notification to the State Board of Pharmacy. All test results shall be provided in the first instance directly to the PAP and any positive result shall be reported immediately by the PAP to the Executive Director of the Board.

- d. The Board reserves the right to require a modification of the manner of the random witnessed urine testing by the PAP in the event technical developments or individual requirements indicate that a different methodology or approach is required to guarantee the accuracy and reliability of the testing.
- e. Respondent's failure to submit to or provide a urine sample within twenty-four hours of a request shall be deemed to be the equivalent of a confirmed positive urine test and shall be deemed a violation of this order unless Respondent is unable to appear for a scheduled urine test due to illness or other impossibility. Respondent must advise the Board in writing within two (2) days, and cause the PAP to so advise the Board in writing within (2) days, of a claimed illness or impossibility. If Respondent fails to appear for a scheduled urine test due to illness, Respondent shall provide to the Board, written substantiation of the illness in the form of a physician's report, within two (2) days. "Impossibility" means an obstacle beyond the control of Respondent that is insurmountable or that makes his appearance for the urine test so infeasible that a reasonable person would waive Respondent's requirement to give the urine sample that day.
- f. All random witnessed alcohol and drug screens shall be negative for the presence of alcohol or drugs, unless the drugs detected by screening were taken for a documented illness pursuant to a valid prescription from a health care practitioner aware of Respondent's substance abuse history. All positive results shall be confirmed by the Gas

Chromatography Mass Spectrometry (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.

- g. Any urine test result showing creatinine levels below 20 mg/dl and a specific gravity below 1.003 shall create a rebuttable presumption of a confirmed positive urine test, and shall be followed by a confirming test. The method of the confirming test shall be determined by the PAP.
- h. Respondent shall become familiar with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Respondent specifically agrees that ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.
- i. Respondent shall submit to continued therapy with Al Cotton, L.C.S.W. and Laurie Deerfield, Psy.D., or other licensed or certified equivalent therapist approved by the PAP, until such time as the treating therapist, in consultation with the Executive Medical Director of the PAP agree that therapy is no longer required.
- j. Respondent shall be responsible to ensure that the PAP shall supply reports to the Board every ninety (90) days beginning on the "filed" date of this Order regarding his progress with the monitoring program.
- k. Respondent shall obtain the agreement of the PAP via a signature of its representative on this Order to notify the Board within 24 hours of its receipt of information of any noncompliant behavior, slip or relapse of impairment, including but not limited to any positive urine screen or failure to appear for urine monitoring or any scheduled appointment or any discontinuance of the PAP rehabilitation program whether initiated by Respondent or by the PAP.

1. Respondent expressly waives any claim to privilege or confidentiality that he may have concerning reports and disclosures to the Board, and use by the Board of that information in any license proceedings, including reports and disclosures by the urine monitoring program, or the PAP, or any other person or entity involved in his rehabilitation program.
- m. All costs associated with the monitoring outlined above shall be the responsibility of, and paid directly by, Respondent.
5. A copy of this Order shall be provided to all employers where a pharmacy license is required for employment or where the respondent has access to medication, prescriptions or patient profiles. The respondent shall ensure that each employer notifies the Board in writing that he or she has received this Order prior to respondent beginning employment. The respondent shall inform the Board in writing of any employment changes, including periods of unemployment, and shall also provide a detailed description of his job, role and responsibilities.
6. Respondent hereby consents to the entry of an Order of automatic suspension of license without notice, upon the Board's receipt of any information which the Board in its sole discretion deems reliable that Respondent has failed to comply with any of the conditions set forth above, any other provision of this Order, any report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of the use of alcohol or any psychoactive substance which is not prescribed by a treating health care professional aware of respondent's substance abuse history, for a

documented medical condition, and with notification to the PAP as described in ordered paragraph 4a.

7. Respondent shall have the right to apply for removal of the automatic suspension on five (5) days notice but in such event shall be limited to a showing that the urine tested was not his or was a false positive in the case of urine testing, or that other information submitted was false.

NEW JERSEY STATE BOARD OF PHARMACY

By: Edward McGinley R.P.
Edward McGinley, R.P.
President

I have read the within Order and understand its terms. I consent to the entry of this Order by the New Jersey Board of Pharmacy.

Charles H. Rubinstein
Charles H. Rubinstein, R.P.

L.E.B. Jr.
Louis E. Baxter, Sr., M.D., FASAM
Medical Director
Physicians Assistance Program